


REMARKS

By this preliminary amendment, Applicants have claimed priority to U.S. Application Serial No. 10/073,761 filed February 11, 2002, U.S. Application Serial No. 09/408,944, and U.S. Provisional Application No. 60/105,417, filed October 23, 1998. The originally filed application only claimed priority to US Application Serial No. 10/073,761.

Upon inspection of Application Serial No. 10/073,761, it was determined priority was not correctly claimed back to U.S. Provisional Application No. 60/105,417. Therefore, on April 8, 2004, an Amendment and Petition for an Unintentionally Delayed Domestic Priority Claim was filed for U.S. Application Serial No. 10/073,761, a copy of both are attached for your convenience.

In light of this Preliminary Amendment and the Amendment and Petition relating to Application Serial No. 10/073,761, it is believed the chain of priority is proper as cited on Page 2 of this Preliminary Amendment. Early and favorable consideration of these claims is earnestly solicited.

Respectfully submitted,



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PATENT OFFICE DATE STAMP WILL ACKNOWLEDGE RECEIPT OF:

1. Petition for an Unintentionally Delayed Domestic Priority Claim (in triplicate)
2. Certificate of Mailing

Applicant: Wham et al.
Serial No.: 10/073,761
Filed: February 11, 2002
For: VESSEL SEALING SYSTEM
Docket: 2155CIP (203-3398CIP)
Dated: April 8, 2004

ECM/MJP/gm





UNITED STATES PATENT AND TRADEMARK OFFICE

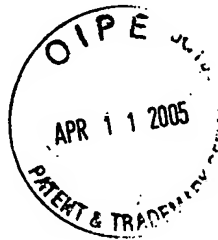
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Paper No. 22

Chief Patent Counsel
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OFFICE OF PETITIONS

In re Application of
Wham et al.
Application No. 10/073,761
Filed: February 11, 2002
Attorney Docket No. (2155CIP)203-3398CIP

:
: DECISION ON PETITION
: UNDER 37 CFR 1.78(a)(6)
:

This is a decision on the petition under 37 CFR 1.78(a)(6), filed April 12, 2004, to accept an unintentionally delayed claim under 35 U.S.C. § 119(e) for the benefit of the prior-filed provisional application set forth in the concurrently filed amendment.

The petition is **GRANTED**.

A petition under 37 CFR 1.78(a)(6) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after expiration of the period specified in 37 CFR 1.78(a)(5)(ii) and must be filed during the pendency of the nonprovisional application. In addition, the petition must be accompanied by:

- (1) the reference required by 35 U.S.C. § 119(e) and 37 CFR 1.78(a)(5)(i) to the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(5)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The prior formerly pending nonprovisional application No. 09/408,944 was filed on September 30, 1999, which is within twelve months of the filing date of the prior-filed provisional application, Application No. 60/105,417, which was filed on October 23, 1998, for which priority is claimed. A reference to the prior-filed provisional application has been included in an amendment to the first sentence of the specification following the title.

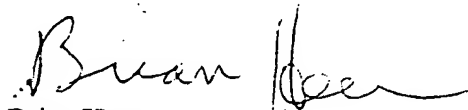
The instant nonprovisional application was filed after November 29, 2000, and the claim for priority herein is submitted after expiration of the period specified in 37 CFR 1.78(a)(5)(ii). Also, the reference to the prior-filed provisional application was submitted during the pendency of the prior nonprovisional application through which the benefit is sought. See 35 U.S.C. §119(e). Accordingly, having found that the instant petition satisfies the conditions of 37 CFR 1.78(a)(6) for acceptance of an unintentionally delayed claim for priority under 35 U.S.C. §119(e), the petition to accept an unintentionally delayed claim of benefit to prior-filed provisional Application No. 60/105,417 is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application under 37 CFR 1.78(a)(6) should not be construed as meaning that the instant application is entitled to the benefit of the filing date of the prior-filed application. In order for the instant application to be entitled to the benefit of the prior-filed application, all other requirements under 35 U.S.C. §119(e) and 37 CFR 1.78(a)(4) and (a)(5) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed application noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

A corrected Filing Receipt, which includes the priority claim to the prior-filed provisional application, accompanies this decision on petition.

This application is being forwarded to Technology Center AU 3739 for appropriate action on the Request For Continued Examination submitted April 12, 2004, and consideration by the examiner of the claim under 35 U.S.C. §119(e) for the benefit of priority to prior-filed provisional Application No. 60/105,417.

Any inquiries concerning this decision may be directed to the undersigned at (703) 305-1820.



Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

ATTACHMENT: Corrected Filing Receipt